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**REPORT OF THE
ADMINISTRATIVE PROCEDURE ACT STUDY COMMISSION**

Submitted pursuant to
S. L. 1979 (2nd Session, 1980), c. 1267, s. 4

February 12, 1981

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REPORT OF THE
ADMINISTRATIVE PROCEDURE ACT
STUDY COMMISSION

FEBRUARY 12, 1981

To the Honorable James B. Hunt, Jr., Governor
To the Honorable Members of the Council of State
To the Honorable Members of the General Assembly

The Administrative Procedure Act Study Commission, established by the 1979 Session (2d Session 1980) of the General Assembly in S.L. 1979, 2nd Sess., c.1267, met on August 29, September 26, November 14, December 5, and December 12, 1980, and on January 9, 22, 29, and February 5 and 12, 1981, in the State Legislative Building. This report is submitted as required by Section 4 of that law. Enclosed is a roster of the members of the Study Commission.

Findings:

The General Assembly adopted Chapter 150A of the General Statutes during its 1973 Session to become effective on February 1, 1976. (S.L. 1973, c.1331, as amended by S.L. 1975, c.69). That Administrative Procedure Act was based largely on the revised model State Administrative Procedure Act, adopted by the Commissioners on Uniform State Laws in 1961.

The growth in size and complexity of our State's administrative law and the experience gained in four years of operation under Chapter 150A provides a strong argument for major revisions in the State's Administrative Procedure Act.

The Act creating the Study Commission set out a wide range of topics to be studied. Most of the specific subject areas dealt with general provisions or the process of rule-making. The Study Commission decided to concentrate on the following areas:

- (1) definitions of terms and general provisions of Act;
- (2) rule-making, public notice, public input, the concept of a State Register, and the publication of the Administrative Code;
- (3) means by which to conduct an efficient, effective and enforceable review of administrative rules;
- (4) means by which to reduce the volume and complexity of administrative rules; and
- (5) the scope of the act and the efficacy of the present exemption of certain agencies from its requirements.

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The first four of these areas have been developed through Commission discussions and seven drafts of revisions to the APA, progressively refined through public hearings and written and oral comments from agency representatives and members of the public.

Definitions of Terms

The Commission finds that the current practices of exempting types of rules from the definition of "rule" and of defining the term "rule" in differing ways for different parts of the Act cause much confusion and should be corrected.

The attached draft provides a single, broad definition of the term "rule" in the definitions section (150A-2) and provides for exemptions from specified requirements of the Act for certain types of rules (150A-9, 150A-9.1).

General Provisions of Act

The present Act fails to provide clear guidance for its construction, establish a mechanism for making the specific procedures of State agencies uniform, or provide necessary flexibility in agency responses to petitions from the public.

The attached draft provides clear language in 150A-4 on how the Act should be construed. Proposed 150A-7 provides for model procedural rules to be prepared and adopted and requires agencies to adopt as much of the rules as is practicable under the circumstances. Proposed 150A-6 offers a system by which the agency may evaluate petitions submitted and may respond in a way most appropriate to the circumstances, regardless of the specific petition made originally to the agency.

Rule-making, public notice, public input.

The present system of rule-making (150A-12) is unreasonably expensive and provides only haphazard public notice of agency actions. A citizen expecting the prescribed newspaper legal advertisements to provide notice of rule-making activity must first determine which of the many newspapers of general circulation in the State the agency will choose for the ad, then must guess on which day the notice will be published, and then find it in the paper. An alternative under the present system is for each interested person to write each of the agencies likely to affect him or his business and ask to be placed on the agency's mailing list for notice by first class mail. Few people request such service. The State Auditor has found that last year, the six largest agencies in the State spent approximately \$169,000 on newspaper legal advertisements, the bulk of which dealt with rule-making.

Further, present 150A-12 requires the agency to conduct an oral town-meeting type of hearing in every rule-making effort. Over 90% of these hearings are attended by one or less persons from the general public. The costs to the State from this process are unquestionably large.

The Commission's draft would replace the newspaper legal advertisements and the first class mailings with a weekly State publication, called the North Carolina Register. Cost estimates show that this publication will be an efficient method of providing notice of rule-making activities and an effective means of offering our citizens input into the system and to offer them the information they need to make that input effective. 150A-65 shows the organization and contents of the Register and 150A-12.1 indicates how the Register acts as the heart of an improved system of administrative rule-making procedures in the State. The Register's primary funding will come from subscriptions and fees charged to State agencies for publication of their notices. The Register will be governed by an editorial board appointed by the Governor, the Attorney General, and the Administrative Rules Review Committee of the General Assembly.

Oral rule-making hearings under proposed 150A-12.2 are optional upon request of 25 persons or certain governmental officials. In this manner, since notice becomes predictable with the Register, an oral hearing can be eliminated and comments received in writing unless the proposals create notable interest from the public. If held, the oral proceedings remain informal, town-meeting type hearings.

The Register will provide early publication of the text of new or amended rules, allowing the Code to update itself annually and refer to the Register as the General Statutes presently refer to the Session Laws.

Review of Rules

The present Act includes no reviewing system; however, the Administrative Rules Review Committee of the Legislative Research Commission does review each rule to determine whether the adopting agency possessed the statutory authority to make the rule. This Committee operates under Article 6C of G.S. Chapter 120.

The Commission proposes several methods to compliment and augment that review system. Since the most effective review of rules is one which takes place before their adoption, 150A-8 proposes a policy statement which, among other things, lists considerations which the agency should take into account before adopting the rule. These considerations focus upon regulatory burdens, compliance requirements, and evaluation of alternatives.

After a rule is adopted, 150A-21.1 authorizes the Attorney General to review the rule for form and to determine whether the agency has complied with the rule-making article of the A.P.A.

Finally, the agency is charged with a periodic review, under 150A-21, of all of its rules. The review emphasizes current law, continued need for the rules, new technology, burdens imposed on the public, and complaints or suggestions received. The agency's summarized report is made available to the public for inspection.

Reducing Volume and Complexity of Rules.

The Commission believes that the public exposure given by a functioning Register and published Code will provide great incentive to the agencies to clarify and reduce the number of rules. The policy objectives of 150A-8, the adoption of uniform rules of procedure under 150A-7, the exemption of carefully considered types of rules in 150A-9(c) and 150A-9.1 from the rule-making system, and the new review procedures all are expected to further the important objectives of simplicity, clarity, and responsiveness.

The Scope of the Act and Agency Exemptions.

The Commission is presently engaged in hearings in which agency representatives and members of the public are given the opportunity to comment on the efficacy of exempting particular agencies from part or all of the Act. Present exemptions are found in 150A-1, an amended version of which will be presented in a supplementary report of this Commission.

Articles 3 and 4 - Contested Case Procedures

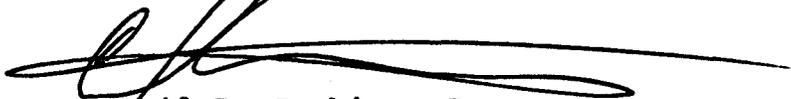
The Commission has not been able, in the six months of its study, to reach the issues of a central pool of hearing officers, the due process aspects of administrative hearings, the venue of those hearings and of the judicial review of hearings, or the many issues arising out of Articles 3 and 4 of the present Act.

Recommendations:

The Administrative Procedure Act Study Commission strongly recommends the enactment of the changes to G.S. Chapter 150A shown in the attached proposal. This proposal sprang from the 1980 Revised Model State Administrative Procedure Act, the updated version of the Model Act upon which present Chapter 150A is based. However, much care has gone into modifying that Model to the peculiarities and needs of our State's system.

Further, the Commission recommends the reconstitution of the Study Commission for a two-year period to monitor the rule-making system's changes, particularly the Register's effectiveness, and to complete the task now begun by studying and offering recommended changes to Articles 3 and 4 of our Administrative Procedure Act in order that our contested case and judicial review procedures may reflect the best current legal and practical thought.

This initial report was adopted by the Administrative Procedure Act Study Commission, this the 12th day of February, 1981.



Cecil R. Jenkins, Jr.
Chairman
A.P.A. Study Commission

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CHAPTER 150A
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REVISED

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**ARTICLE 6
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ARTICLE 1
GENERAL PROVISIONS

150A-1. **Policy and Scope.** — (a) The purpose and intent of this Chapter shall be to establish as nearly as possible a uniform system of administrative procedure for State agencies, which shall be efficient and economical but which shall provide effective public involvement and shall protect the rights of individual members of the public who are affected by the actions of a State agency.

(b)

150A-2. Definitions. — As used in this Chapter:

- (1) "Agency" means each board, bureau, commission, council, department, institution, member of the Council of State, officer, or other administrative unit of the State of North Carolina.
 - (a) "Agency" does not mean the legislative branch or the judicial branch.
 - (b) While "agency" does not mean a political subdivision of the State, any of the administrative units of a political subdivision, or any private corporations created by the General Assembly, the term does include each board, commission, department, office, or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of the State or any of their units.
- (2) "Agency action" means:
 - (a) the whole or a part of a rule, an order, or action that is substantially equivalent to a rule or order;
 - (b) the denial of or failure to act upon a rule or order; or
 - (c) an agency's performance of or failure to perform any duty or function, discretionary or otherwise.
- (3) "Agency head" means the individual or individuals in whom the ultimate legal authority of the agency is vested by constitution, statute, or executive order, including persons acting under the properly delegated authority of the agency head.
- (4) "Contested case" means any agency proceeding by whatever name called, wherein the legal rights, duties, or privileges of a party are required by a provision of law to be determined by an agency after an opportunity for an adjudicatory hearing.
 - (a) "Contested case" includes proceedings involving price-fixing, licensing, and contesting the validity of an existing administrative rule.
 - (b) "Contested case" does not include rule-making proceedings, rate-making, declaratory rulings, or the award or denial of a scholarship or grant.
- (5) "Declaratory ruling" means the formal opinion of an agency regarding the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency.
- (6) "Effective" means that a valid rule which has been filed and has completed the review process is operational and enforceable to the extent permitted by law.
- (7) "License" means a franchise, permit, certification, registration, charter, approval, or similar form of authorization, by whatever name called, required by law to engage in a trade, profession, occupation, business, or other activity, except licenses issued under Chapter 20 or under Subchapter I of Chapter 105 of the General Statutes.
- (8) "Licensing" means any administrative or adjudicatory action respecting the issuance, denial, renewal, revocation, suspension, or modification of a license or the imposition of terms for the exercise of a license. "Licensing" does not include controversies over whether an examination was fair or whether an applicant passed the examination.
- (9) "Matter of public interest" means a matter regarding which:
 - (a) an agency is required, by any provision of law, to give notice and an opportunity to participate to the

- general public or to categories of persons other than the parties; or
- (b) an agency determines that such notice and an opportunity to participate should be given in order to protect the public interest.
- (10) "Order" means an agency's final decision other than a rule or a declaratory ruling.
- (11) "Party to agency proceedings" (or "party" in context so indicating) means:
- (a) a person to whom the agency action is specifically directed;
- (b) a person named as a party to the agency proceeding, or allowed to intervene or participate as a party in the agency proceeding;
- or
- (c) a person who is entitled under any provision of law to participate as a party in the agency proceeding and who makes an appearance or request to be admitted as a party.
- (12) "Person" means any individual, partnership, corporation, association, governmental subdivision, body politic, or public or private organization of any character, including another agency or unit of government.
- (13) "Person aggrieved" means any person or group of persons of common interest who are directly or indirectly affected substantially in their person, property, or public office or employment by an agency action.
- (14) "Provision of law" means any provision of the federal or State Constitution, statutes, rules of court, executive orders, or rules of administrative agencies.
- (15) "Residence" means domicile or principal place of business.
- (16) "Rule" means the whole or a part of an agency's formal statement of general applicability that implements, interprets, or prescribes law or policy within the agency's jurisdiction, or the organization, procedure or practice requirements of an agency. The term includes the amendment or repeal of an existing rule.
- (17) "Rule-making" means the process for formulation and adoption of a rule.
- (18) "Valid" means a rule that has been adopted by an agency pursuant to:
- (a) its statutory authority to make rules and to regulate the subject area of the rule; and
- (b) the procedure required by law.

150A-3. [REPEALED]

150A-4. CONSTRUCTION. -- (a) This Chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by any other statute. This Chapter shall take precedence over every other statute now in existence or subsequently enacted that appears to diminish a right created or duty imposed by this Chapter, unless the other statute expressly provides that the other statute shall take precedence over this Chapter.

(b) To the extent necessary to avoid a denial of funds or services from the United States which would otherwise be available to the State, the Governor may suspend, in whole or in part, one or more provisions of this

Chapter. A suspension terminates when no longer necessary to prevent the loss of funds or services from the United States.

(1) A suspension order or order recognizing the termination of a suspension shall be dated, certified, and published in the North Carolina Register.

(2) If any provision of this Chapter is suspended pursuant to this Section, the Governor shall promptly report the suspension to the Administrative Rules Review Committee and to the Attorney General. The report shall include recommendations with respect to any desirable legislation that may be necessary to conform this Chapter with federal law.

150A-5. **WAIVER.** -- Except to the extent precluded by another provision of law, a person may waive any right conferred upon that person by this Chapter.

150A-6. **CONVERSION OF PROCEEDINGS.** -- (a) The presiding officer or other agency official responsible for a proceeding may, at any point in the proceeding where such action is appropriate and in the public interest, and shall, if required by any provision of law, convert that proceeding to another type of proceeding provided for by this Chapter. A conversion of a proceeding of one type to a proceeding of another type may be effected only with notice to all parties to the original proceeding, and only if it does not prejudice the rights of any party.

(b) If the presiding officer or other agency official responsible for the original proceeding would not have authority over the new proceeding to which it is to be converted, that officer or official shall, in accordance with agency rules, secure the appointment of a successor to preside over or be responsible for that new proceeding.

(c) To the extent feasible and consistent with the rights of parties and the requirements of this Chapter pertaining to the new proceeding, the record of the original proceeding shall be used in the new proceeding.

(d) After a proceeding is converted from one type to another, the presiding officer or other agency official responsible for the new proceeding shall:

(1) give such additional notice to parties or other persons as is necessary to satisfy the requirements of this Chapter pertaining to such proceedings;

(2) dispose of the matters involved without further procedure if sufficient proceedings have already been held to satisfy requirements of this Chapter pertaining to such proceedings; and

(3) conduct or cause to be conducted any additional proceedings necessary to satisfy the requirements of this Chapter pertaining to such proceedings.

(e) Each agency shall adopt rules to govern the conversion of one type of proceeding to another. These rules shall include an enumeration of the factors to be considered in determining whether and under what circumstances one type of proceeding will be converted to another.

150A-7. MODEL RULES OF PROCEDURE. — (a) The Attorney General shall adopt in accordance with the rule-making requirements of this Chapter model rules of procedure appropriate for use by as many agencies as possible. The model rules should deal with all general functions and duties performed in common by several agencies.

(b) Each agency shall adopt as much of the model rules as is practicable under its circumstances. Any rule of procedure adopted by an agency after January 1, 1982, that differs from the model rules must contain in the statement of the purpose of the rule required by G.S. 150A-14(a)(2), the reasons why the applicable provisions of the model rules were impracticable under its circumstances.

**ARTICLE 2
RULE-MAKING**

150A-8. RULE-MAKING POLICY. — (a) Rules shall be as simple and clear as possible. They should be formulated to achieve legislative goals effectively and efficiently, and should not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on local governments.

(b) To achieve the objectives of Subsection (a), agencies should develop rules through a process which ensures that:

- (1) the need for and purposes of the rule are clearly established;
- (2) the agency will exercise effective oversight;
- (3) the opportunity exists for early participation and comment by other State agencies, local governments, businesses, organizations, and the public;
- (4) meaningful alternatives are considered and analyzed before the rule is adopted; and
- (5) costs of compliance to the public are minimized.

(c) For rules which make substantial changes to existing programs or practices or which have substantial effects on the public, agencies should consider, among other things:

- (1) the type and number of individuals, businesses, organizations, or local governments affected;
- (2) the compliance and reporting requirements likely to be involved;
- (3) direct and indirect effects of the rule, including the effect on competition;
- (4) the relationship of the rule to those of other programs and agencies;
- (5) alternative approaches to the regulatory issues; and
- (6) any public comments on the proposed program of regulation.

150A-9. MINIMUM PROCEDURAL REQUIREMENTS. — (a) It is the intent of this Article to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. No rule hereafter adopted is valid unless adopted in substantial compliance with the provisions of G.S. 150A-9 through 150A-15.

(b) An action to contest the validity of a rule on the grounds of its noncompliance with any of the provisions of this Article must be commenced within two years after the effective date of the rule.

(c) Except to the extent provided otherwise by any provision of law, G.S. 150A-12.1, 150A-12.2, 150A-13.1, 150A-14, 150A-15, 150A-18, 150A-19, 150A-65, and G.S. 150A-65.1 are inapplicable to an agency action which falls into any of the following categories:

- (1) a rule concerning only the internal management of an agency or group of agencies, including employer-employee relationships and employee conduct, if such a rule does not directly and substantially affect the substantive or procedural rights or duties of the public;

(2) intra-agency memoranda, except those to agency staff which are intended formally to implement law or prescribe policy;

(3) a rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases, if the disclosure of the criteria or guidelines would:

- (a) enable law violators to avoid detection;
- (b) facilitate disregard of requirements imposed by law; or
- (c) give a clearly improper advantage to persons who are in an adverse position to the State;

(4) statements or interpretations of law or policy that are made in the decision of a contested case;

(5) statements or interpretations that only define or explain the meaning of a statute or other provision of law or precedent, if the agency does not possess delegated authority to bind the courts with its definition or explanation;

(6) a rule relating only to the use or creation of a particular road or facility owned, operated, or maintained by the State or any of its subdivisions, if the substance of that rule is adequately indicated by means of signs or signals to persons who use the road or facility;

(7) a rule establishing only scientific or engineering standards, if those standards are published or distributed separately by the agency;

(8) a rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property;

(9) a rule concerning only ministerial functions relating to inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital or the supervising State agency and made available for inspection and copying at cost by the inmates, students, or patients therein and if a grievance procedure exists to resolve challenges of such rules and actions taken under them;

(10) a form the contents or substantive requirements of which are prescribed by rule or statute or are instructions for the execution or use of the form; or

(11) salary schedules and other methods of compensation prescribed by the General Assembly.

(d) Before adopting a rule under paragraph (c) of this Section, an agency may in some suitable manner give advance notice of the contents of the contemplated rule to persons who would be affected by it and solicit their views thereon.

150A-9.1. EXEMPTION FOR CERTAIN RULES. — (a) An agency need not follow the provisions of G.S. 150A-12.1 and 150A-12.2 to adopt, amend, or repeal a rule the terms of which are specifically required by constitution, statute, federal regulation, or court order.

(b) Where an agency head formally determines in writing that adherence to the provisions of G.S. 150A-12.1 and 150A-12.2 would be contrary to the public interest and that the public health, safety, or welfare requires such action, the agency may promulgate a temporary rule without following those provisions. Such a temporary rule becomes effective on the date it is filed with the Attorney General under G.S. 150A-18 and may remain in effect for no

longer than 90 days from the date of that filing. Each temporary rule shall be accompanied by a Notice of Proposed Rule-making, commencing a regular rule-making process under G.S. 150A-12.1. The determination of the agency head must be included in the statement of the purpose of the rule required by G.S. 150A-14.

150A-10. [REPEALED]

150A-11. **REQUIRED RULE-MAKING; SPECIAL REQUIREMENTS.** — (a) In addition to other rule-making requirements imposed by law, each agency shall:

(1) adopt as a rule a description of the organization of the agency which states the general course and method of its operations and how and where the public may obtain information or make submissions or requests;

(2) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available to the public, including a description of all forms and instructions that are to be used by the public in dealing with the agency; and

(3) as soon as feasible and to the extent practicable, adopt rules to codify new principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases.

(b) With respect to all proposed rules requiring the expenditure or distribution of State funds, each agency shall submit to the Director of the Budget a summary of the proposed rule or rules and obtain approval of such expenditure or distribution of State funds prior to publishing the notice of proposed rule adoption required by G. S. 150A-12.1.

(c) An agency shall maintain an official rule-making record for each rule it adopts. The record must be maintained for a period of at least two years from the effective date of the rule or action involved. The record must be available for public inspection and shall include:

(1) copies of all public notices respecting the rule or the proceedings upon which the rule is based;

(2) all written petitions, requests, submissions, and comments tendered to the agency, and all written materials considered by the agency, in connection with the formulation, proposal, or adoption of the rule, or the proceeding upon which the rule is based;

(3) any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, any tape recording or stenographic record thereof, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(4) a copy of any impact statement prepared for the proceeding upon which the rule is based;

(5) a copy of the rule and any explanatory statement filed in the Office of the Attorney General;

(6) a copy of any request for rule-making proceeding filed pursuant to G.S. 150A-67;

(7) all petitions for exceptions to, amendment of, or repeal or suspension of the rule; and

(8) a copy of any objection to the rule filed by the Administrative Rules Review Committee pursuant to G.S. Chapter 120, and any correspondence between the Committee and the agency relating to the rule.

150A-11.1. ADVICE ON POSSIBLE RULES PRIOR TO NOTICE OF PROPOSED RULE-MAKING. — In addition to seeking information by other methods an agency may, prior to the publication of a notice of proposed rule-making under G.S. 150A-12.1, solicit comments from the public on a subject matter of possible rule-making under active consideration within the agency by causing notice to be published in the North Carolina Register of the subject matter and indicating when, where, and how persons may comment.

150A-12. [REPEALED]

150A-12.1. NOTICE OF PROPOSED RULE-MAKING. — At least 30 days before the adoption of a rule an agency shall cause notice to be published in the North Carolina Register of its contemplated action. The notice shall include:

- (1) a short explanation of the purpose of the agency action;
- (2) the specific legal authority authorizing the proposed rule and the agency's action;
- (3) a summary of the proposed rule, including a description of the subjects and issues involved, or the text of the rule, and the intended effect of the action;
- (4) the name, address, and telephone number of a knowledgeable person within the agency from whom additional information may be obtained;
- (5) when, where, and how persons may present their views on the proposed rule by mail or by hand delivery;
- (6) when, where, and how persons may demand an oral proceeding thereon if the notice does not already provide for one; and
- (7) the proposed effective date of the rule.

150A-12.2. PUBLIC PARTICIPATION IN RULE-MAKING. — (a) An agency shall afford persons at least 20 days after publication of the notice of proposed rule-making to submit in writing data, views, or arguments with respect to the proposed rule.

(b) An agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published notice of proposed rule-making, 25 persons, a governmental subdivision or agency, the Administrative Rules Review Committee, the Governor, or the Attorney General make a written request for an oral proceeding. At that proceeding the agency shall provide an opportunity for persons to make oral argument on the proposed rule.

(1) An oral proceeding on a proposed rule must be held not earlier than 10 days after publication in the North Carolina Register of a notice indicating its time and place.

(2) The agency head, a member of the agency, or another presiding officer designated by the agency shall preside at a required oral proceeding on a proposed rule. Oral proceedings shall be open to the public and be recorded by stenographic or mechanical means.

(3) The oral rule-making proceeding shall comply with any applicable statute, but is not subject to the provisions of Article 3 of this Chapter, governing contested cases, unless a rule is required by law to be adopted pursuant to adjudicatory procedures.

(4) The agency shall notify all persons requesting an oral proceeding on a rule-making proposal whether such oral proceeding will be held and, if so, where and when it will occur.

(c) The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by a person aggrieved either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for its action.

150A-13. [REPEALED]

150A-13.1. **TIME AND MANNER OF RULE ADOPTION.** — (a) An agency may not adopt a rule until the period for making written submissions and oral presentations thereon has expired.

(b) Within 180 days following the expiration of the period for public comment, an agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the North Carolina Register. The agency may elect to extend this period 90 days upon publication of a notice to that effect in the North Carolina Register.

(c) Before the adoption of a rule, an agency shall consider fully the written and oral submissions or any memorandum summarizing oral submissions provided for by this Article.

(d) Within the scope of its delegated authority, an agency may utilize its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

150A-14. **CONTENTS, STYLE, AND FORM OF RULE; ADOPTION BY REFERENCE.** —

(a) In addition to its text, each rule adopted by an agency must be accompanied by a certificate showing:

- (1) the date the agency adopted the rule;
- (2) a concise statement of the purpose of the rule;
- (3) a reference to all rules repealed, amended, supplemented, or suspended by the rule;
- (4) a reference to the specific statutory or other authority authorizing adoption of the rule and implemented or interpreted by the rule; and
- (5) the effective date of the rule.

(b) The Attorney General shall prescribe by administrative rule a uniform style and format to be used in preparing and filing rules. Each agency shall follow that style and form in preparing and filing its rules pursuant to this Article.

(c) An agency may incorporate, by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this State or another state, or by a generally-recognized organization or association, if incorporation of its text in agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency rules must fully identify the incorporated matter by date, location, and otherwise. Except for the model rules of procedure prescribed in G.S. 150A-7, an incorporation by reference shall not cover any later amendments or editions of the incorporated matter, but if the agency wishes to incorporate them in its rule, it shall amend the rule or promulgate a new rule therefor.

(1) An agency may incorporate matter by reference only if the issuing agency, organization, or association makes copies of the matter readily available to the public.

(2) The rules must state where copies of the incorporated matter are available from the agency issuing the rule, and from the agency, the organization, or the association originally issuing that matter. The agency shall have copies of the incorporated matter available for public inspection and reproduction at cost where such reproduction does not violate any copyright on the incorporated matter.

150A-15. **CONTINUATION OF RULES.** — (a) When a law authorizing or directing an agency to promulgate rules is repealed and substantially the same rule-making power or duty is vested in the same or a successor agency by a new provision of law or the function of the agency to which the rules are related is transferred to another agency, by law or executive order, the existing rules of the original agency relating thereto continue in effect until amended or repealed, and the agency or successor agency may repeal any rule relating to the function.

(b) When a law creating an agency or authorizing or directing it to promulgate rules is repealed or the agency is abolished and substantially the same rule-making power or duty is not vested in the same or a successor agency by a new provision of law and the function of the agency to which the rules are related is not transferred to another agency, the existing applicable rules of the original agency are automatically repealed as of the effective date of the repeal of such law or the abolition of the agency.

150A-16. [REPEALED]

150A-17. [REPEALED]

150A-18. **FILING RULES; EFFECTIVE DATE OF RULES.** — (a) Rules adopted by any agency shall be filed with the Director of Research of the General Assembly for review by the Administrative Rules Review Committee pursuant to G.S. Chapter 120, with the Office of the State Register for publication in the North Carolina Register, and with the Attorney General for assimilation into the North Carolina Administrative Code.

(b) A rule may not become effective sooner than 30 days after filing with the Attorney General, unless the agency establishes an earlier provisional effective date and finds that:

- (1) the earlier effective date is required by constitution, statute, or court order;
- (2) the rule only confers a benefit or removes a restriction on the public or some segment thereof;
- (3) the rule only delays the effective date of another rule that is not yet effective; or
- (4) consideration of the public health, safety, or welfare requires the earlier effective date.

(c) The agency shall include its finding of necessity for an earlier effective date and a brief statement of the reasons therefor with the materials filed pursuant to paragraph (a) of this Section.

(d) An earlier effective date established under this Section shall not abridge the period of review of the rule by the Administrative Rules Review Committee of the General Assembly.

(e) In no event may an earlier effective date established under this Section precede the date of filing with the Attorney General.

(f) An effective date later than 30 days after filing may be established where required by statute or specified in the rule.

(g) This Section does not relieve an agency from compliance with any law requiring that some or all of its rules be approved by other designated officials or bodies before they become effective.

150A-19. AUTHORITY OF ATTORNEY GENERAL TO REVISE FORM OF RULES. —

(a) The Attorney General shall have the authority, following acceptance of a rule for filing, to revise the form of the rule as follows:

- (1) To rearrange the order of rules, chapters, subchapters, sections, paragraphs, and other divisions;
- (2) To provide or revise titles or catchlines;
- (3) To reletter or renumber the rules and various subdivisions in accordance with a uniform system;
- (4) To rearrange definitions and lists;
- (5) To make other changes in arrangement or form that in the opinion of the Attorney General do not alter the substance of the rule and that the Attorney General determines are necessary or desirable for an accurate, clear, and orderly arrangement of rules; and
- (6) To make changes in expression, in consultation with the affected agency, that in the opinion of the Attorney General and the affected agency do not alter the substance of the rule and are necessary or desirable for an accurate, clear, and understandable rule.

(b) Revision of form by the Attorney General shall not alter the effective date of a rule, nor shall revision require the agency to readopt or to refile the rule.

(c) The rule so revised as to form shall be substituted for and shall bear the date of the rule originally filed, and shall be the official rule of the agency.

150A-20. JUDICIAL NOTICE. — The courts and administrative agencies shall take judicial or official notice, respectively, of any rule effective under this Chapter.

ARTICLE 2A
REVIEW OF ADMINISTRATIVE RULES

150A-21. **AGENCY REVIEW OF RULES.** — (a) Each agency shall periodically review its rules to determine whether any new rule should be adopted and whether any existing rule should be amended or repealed. In its review, the agency should consider such criteria as:

- (1) the continued need for the rules and for the program of regulation;
- (2) changes, if any, in the statutory framework for the rules and for the program of regulation;
- (3) the type and number of complaints or suggestions received;
- (4) the burdens imposed on those directly or indirectly affected by the rules;
- (5) the need to simplify or clarify language;
- (6) the need to eliminate overlapping and duplicative rules; and
- (7) the length of time since the rules have been evaluated and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rules.

(b) Each agency shall prepare a written report summarizing the review of its rules, indicating whether any comments from the public were considered during the review, and outlining any action taken or planned to correct any deficiencies noted, to reduce regulatory burdens on the public, and to improve the agency's regulatory system.

(c) A copy of each agency report shall be sent to the Administrative Rules Review Committee and the Attorney General and shall be made available for public inspection.

150A-21.1. **REVIEW OF RULES BY THE ATTORNEY GENERAL.** — (a) The Attorney General shall selectively review proposed or adopted rules for the form prescribed by G.S. 150A-14. Additionally, the Attorney General may review:

- (1) The agency procedures followed in adopting the rules under review to determine whether the requirements of Article 2 of this Chapter have been met; and
- (2) Rules adopted in accordance with G.S. 150A-18(b) or G.S. 150A-9.1 to determine whether the reasons given in the agency finding of emergency justify such action;

(b) If the Attorney General finds that the rules under review fail to meet the requirements for form or filing procedure of this Chapter or fail to demonstrate a need for an emergency effective date, he may decline to accept the rules for filing until the discrepancies are resolved by the adopting agency.

(c) If the Attorney General questions the rule-making procedures followed or the reasons given for action under G.S. 150A-18(b) or G.S. 150A-9.1, he shall advise the adopting agency of the specifics of his questions and shall suggest action to resolve the questions.

ARTICLE 2B
LICENSES, APPLICATIONS, PETITIONS, AND REQUESTS

150A-22. AGENCY ACTION ON APPLICATIONS, PETITIONS, AND REQUESTS. —

(a) An agency's processing of an application, petition, or request in any matter other than rule-making or a declaratory ruling is governed by this Section, except to the extent that the time limits in this Section are inconsistent with the limits established by another statute for any stage of the proceedings.

(b) In the case of an application for a license, benefit, contract, employment, classification, compensation, lease or other interest in property, or other agency action specifically addressed to the applicant:

(1) Within 30 days after receipt of the application, the agency shall examine the application, notify the applicant of any apparent errors or omissions, request any additional information that the agency is permitted by law to require, and notify the applicant of the name, official title, address, and telephone number of an agency member or employee who may be contacted regarding the application.

(2) Except in situations governed by subpart (3), within 90 days after receipt of the application or of the response to a timely request made by the agency pursuant to subpart (1), the agency shall:

a. approve or deny the application, in whole or in part, on the basis of its administrative processes, if disposition of the application by the use of these processes is not precluded by any provision of law; or

b. commence administrative hearing procedures in accordance with Article 3 of this Chapter.

(3) If the application pertains to subject matter that is not available but may be available in the future, including the application for housing or employment at a time when no vacancy exists, the agency may proceed to make a determination of eligibility within the time provided in subpart (2). If the agency determines that the applicant is eligible, the agency shall maintain the application on the agency's list of eligible applicants as provided by law, and shall, upon request, notify the applicant of the status of the application.

(c) An agency shall give prompt notice of the disposition in whole or in part of any written application not governed by subsection (b) or of any written petition or request. The notice must include a brief statement of the reasons for any disposition that denies, in whole or in part, such application, petition, or request.

(d) When a timely and sufficient application (including the payment of any required license fee) has been made for renewal of a license with reference to any activity of a continuing nature that does not automatically expire by statute, the existing license does not expire until the agency has taken final action upon the application for renewal or, in case the agency's action is unfavorable, until the last day for seeking judicial review of the agency's action or a later date fixed by the reviewing court.

150A-22.1. AGENCY ACTION AGAINST LICENSEES. — An agency may not revoke, suspend, or modify a license unless the agency first gives notice and an opportunity for appropriate administrative hearing procedures in accordance with Article 3 of this Chapter or other statute. This section does not preclude an agency from taking immediate action to protect the public interest in accordance with G.S. 150A-22.2, or from adopting rules pertaining to a class of licensees.

150A-22.2. **SUMMARY SUSPENSION OF LICENSES.** — (a) If the agency finds that the public health, safety, or welfare requires emergency action, the agency head may order summary suspension of a license effective on the date specified on the order or on service of the certified copy of the order at the last known address of the licensee. Such an order shall remain effective during the administrative hearing proceedings under Article 3 of this Chapter.

(b) The agency head shall include in the order of summary suspension a brief statement of conclusions of law, the policy reasons therefor, and findings of fact to justify the agency's determination to take the emergency action.

(c) After issuing an order of summary suspension pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not require the emergency action.

150A-68. **DECLARATORY RULINGS.** — (a) Any person aggrieved may petition an agency for a declaratory ruling regarding the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the agency. Each agency shall provide by rule for the form, contents, and filing of such petitions, the procedural rights of petitioner in relation thereto, and the disposition of such petitions, including a description of the circumstances in which it will issue such a ruling and the circumstances in which it will not issue such a ruling.

(b) After receipt of a petition for a declaratory ruling, an agency shall promptly give notice of the petition to all persons to whom notice is required by any provision of law, and may give notice to any other persons it deems desirable.

(c) Within 30 days after receipt of a petition for a declaratory ruling, an agency shall, in writing, either:

- (1) issue a ruling declaring the applicability to the specified circumstances of the statute, rule, or order in question;
- (2) set the matter for specified proceedings;
- (3) agree to issue such a ruling by a specified time; or
- (4) decline to issue a declaratory ruling, stating the reasons for its action.

(d) A petitioner may seek judicial review of an agency's failure to issue a declaratory ruling if, within 90 days after receipt of a petition therefor, the agency has not issued a declaratory ruling or has declined to issue such an order. The agency's failure to take formal action on a petition for a declaratory ruling within the 90 day period shall be considered a final agency action declining to issue such a ruling.

(e) A copy of all rulings issued under this Section shall promptly be mailed to the petitioner, if any, and any persons to whom notice was given.

(f) A declaratory ruling is binding on the issuing agency and the petitioner but is not enforceable against any other member of the public.

(g) An agency may not retroactively change a declaratory ruling, but nothing in this Section prevents an agency from prospectively changing a declaratory ruling.

(6) one copy to the Legislative Research Commission for the use of the General Assembly; and

(7) five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 147-50.1.

(d) The Attorney General shall make available individual copies of the Code, or any supplement thereto or portion thereof, to other persons at a price to be determined by him to cover publication and mailing costs.

(e) Any money received by the Department of Justice from subscription to or sale of the North Carolina Administrative Code shall be deposited in the State Treasury in a special funds account to be held in trust for the Department of Justice to defray the expense of future recompilation, publication, and distribution of the Code. All moneys involved shall be subject to audit by the State Auditor.

(f) Each agency shall also make available for public inspection those portions of the Code containing rules adopted or used by the agency in the discharge of its functions, and the index pertaining thereto.

150A-66. PUBLIC INSPECTION OF RULES.— (a) Except to the extent provided otherwise by any provision of law, G.S. 150A-65 and G.S. 150A-65.1 are inapplicable to rules within the scope of G.S. 150A-9(c), and the provisions of this Section are applicable instead.

(b) Each agency shall maintain its official and current files indexed in a manner that will facilitate public inspection of all matters within the scope of G.S. 150A-9(c) and G.S. 150A-68. Except for those portions containing rules within the scope of G.S. 150A-9(c)(3), the files shall be made available for public inspection and copying at cost.

150A-67. PETITION FOR RULE-MAKING. — Any person may petition an agency requesting the adoption, amendment, or repeal of a rule, and may accompany his petition with such data, views, and arguments as he thinks pertinent. Each agency shall prescribe by rule the form of the petition and the procedure for its submission, consideration, and disposition. Within 90 days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons therefor, or initiate rule-making proceedings in accordance with Article 2 of this Chapter, or, if otherwise lawful, adopt a rule. Denial of the petition for rule-making under this Section shall be considered a final agency action for purposes of judicial review, which shall be limited to questions of abuse of agency discretion. If the agency fails to take formal action on the petition within the 90 day period, the agency shall be considered to have denied the petition.

(6) ten copies to the Legislative Research Commission for the use of the General Assembly; and

(7) five copies to the Division of State Library of the Department of Cultural Resources, pursuant to G.S. 147-50.1.

(d) The Office of the State Register shall make available individual copies of the Register, or any supplement thereto or portion thereof, to other persons at a price to be determined by the Editorial Board to cover publication and mailing costs.

(e) Any money received by the Office of the State Register from subscription to or sale of the North Carolina Register or from fees charged to agencies for publication of notices in the Register shall be deposited in the State Treasury in a special funds account to be held in trust for the Office of the State Register to defray the expense of future promotion, publication, and distribution of the Register. All moneys involved shall be subject to audit by the State Auditor.

(f) Each agency shall also make available for public inspection those portions of the Register containing rules adopted or used by the agency in the discharge of its functions, and the index pertaining thereto.

150A-65.1. THE NORTH CAROLINA ADMINISTRATIVE CODE. — (a) The Attorney General shall cause the North Carolina Administrative Code to be compiled, indexed by subject, and published in print, microfiche, or other form. All of the effective rules of each agency shall be published and indexed in the Code. The Attorney General shall devise a uniform numbering system for rules published in the Code, and may assign numbers to rules before or after publication to conform with the system.

(b) The Attorney General may omit from the Code any rule, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency at no more than its cost of reproduction and the Code contains a notice stating in detail the specific subject matter of the omitted rule and how a copy thereof may be obtained.

(c) The North Carolina Administrative Code shall be made available to all subscribers at a cost to be determined by the Attorney General and shall be furnished, without charge, to the following officials and departments in the following quantities:

(1) one copy to each county of the State, which shall be maintained for public inspection in the county in a place designated by the county commissioners;

(2) one copy each to the clerk of the Supreme Court of North Carolina and the clerk of the North Carolina Court of Appeals;

(3) one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals;

(4) one copy to the Office of the Governor;

(5) one copy to the Office of the State Register;

**ARTICLE 6
PUBLIC ACCESS TO AGENCY LAW AND POLICY**

150A-65. THE NORTH CAROLINA REGISTER. -- (a) There shall be an Office of the State Register within the Department of Administration which shall compile, index, and publish the "North Carolina Register" once each week.

(1) The North Carolina Register shall contain:

- a. notices of proposed rule-making, required by G.S. 150A-12.1;
- b. notices of oral proceedings on proposed rules as required by G.S. 150A-12.2;
- c. the text of newly-filed adopted rules and the information required by G.S. 150A-14(a);
- d. objections to rules by the Administrative Rules Review Committee of the General Assembly;
- e. Executive Orders of the Governor; and
- f. notices of public meetings of State agencies pursuant to G.S. 143-318.12.

(2) The North Carolina Register may contain other notices and materials of general interest to the public of North Carolina, which may include, but are not limited to:

- a. federal legislation or regulations affecting the State or State agencies;
- b. summarized decisions in contested cases;
- c. formal opinions of the Attorney General;
- d. listings of new State documents available to the public;
- e. invitations to bid on and awards of State contracts; and
- f. State agency organizational and personnel changes.

(b) There shall be created a North Carolina Register Editorial Board which shall oversee the operation of the Register.

(1) The Editorial Board shall consist of five persons: two appointed by the Governor, two appointed by the Attorney General, and one appointed by the Administrative Rules Review Committee of the General Assembly. The members of the Editorial Board shall serve terms of two years without compensation, shall elect from their number a chairman, and shall meet at least monthly.

(2) The Editorial Board shall adopt rules setting forth standards for the content and format of notices to be published in the North Carolina Register and shall adopt rules regarding the contents and operation of the Register.

(c) The North Carolina Register shall be made available to all subscribers at a cost to be determined by the Editorial Board and shall be furnished, without charge, to the following officials and departments in the following quantities:

- (1) one copy to each county of the State, which shall be maintained for public inspection in the county in a place designated by the county commissioners;
- (2) one copy each to the clerk of the Supreme Court of North Carolina and the clerk of the North Carolina Court of Appeals;
- (3) one copy each to the libraries of the Supreme Court of North Carolina and the North Carolina Court of Appeals;
- (4) one copy to the Office of the Governor;
- (5) twenty-five copies to the Office of the Attorney General;